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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MARY A. BOTTOMS, an individual and as trustee for the Bottoms Family 1989 Trust;) CASE NO. 3:05-cv-03045 SI
THE BLUE OAK CHARITABLE FUND, a California non-profit public benefit corporation,)
Plaintiffs,)
vs.)
ATKN COMPANY OF CALIFORNIA, f/k/a Guy F. Atkinson Company of California;)
ATKN COMPANY, a Nevada corporation,)
f/k/a Guy F. Atkinson Company, and DOES 1 - 100,k)
Defendants.)

**JOINT APPLICATION AND
STIPULATION TO AMEND THE
PRETRIAL PREPARATION ORDER AS
AMENDED**

The parties to this action jointly stipulate and apply for a change in the Pretrial Preparation Order (as Amended July 23, 2007) to change the dates for various benchmarks in the progress of this action.

As explained in the June 29, 2007 Joint Application and Stipulation to Amend the Pretrial Preparation Order, discovery in this action has been hampered by a variety of factors. Foremost is that defendants ATKN are defunct, but retain literally thousands of boxes of documents in storage.

1 Of those thousands of boxes, nearly 100 boxes were identified as having documents that may be
 2 relevant to this dispute. The parties continue to progress in their review of these documents, but
 3 the large volume and the condition of the documents (many are more than 40 years old) continue to
 4 present challenges that exceed the estimates of the parties.

5 Neither party has conducted sufficient discovery to allow it to be adequately prepared by the
 6 January 30, 2008 discovery cut-off. Furthermore, the parties hope to conduct a second mediation
 7 session before launching into numerous depositions, which will likely require significant travel
 8 because 1) ATK&N's predecessor, Guy F. Atkinson Co., had offices in several cities throughout the
 9 country, such that witnesses with relevant information may not have ever lived in the Bay Area, and
 10 2) the passage of so much time since the events that allegedly give rise to liability means that many
 11 witnesses have moved out of the area. Therefore, the deposition process is likely to be more
 12 difficult and expensive than it would be in other cases, and the parties would like to explore
 13 whether such depositions can be avoided by a negotiated settlement.

14 Counsel for the parties have met and conferred, and we believe that the following schedule
 15 should allow the parties sufficient time to explore mediation and still conduct full discovery, if
 16 necessary:

NON-EXPERT DISCOVERY CUTOFF:	August 1, 2008
DESIGNATION OF EXPERTS:	August 29, 2008
DESIGNATION OF REBUTTAL EXPERTS:	September 19, 2008
EXPERT DISCOVERY CUTOFF:	October 17, 2008
DISPOSITIVE MOTIONS FILED BY:	November 14, 2008
OPPOSITION DUE:	December 1, 2008
REPLY DUE:	December 8, 2008
HEARING DATE:	December 19, 2008
PRETRIAL CONFERENCE:	February 24, 2009
TRIAL:	March 9, 2009

27 Furthermore, the parties stipulate that defendants may have leave to file a counterclaim in
 28 the form attached hereto as Exhibit A. Good cause exists for the filing of this counterclaim in that

1 recently decided case law (*United States v. Atlantic Research*, 127 S.Ct. 2331, 168 L.Ed.2d 28,
2 (2007)) suggests that such a counterclaim is necessary to place allocation of liability under
3 CERCLA in issue. Plaintiffs do not stipulate as to the validity of claims asserted or claims made by
4 defendants.

5 We respectfully request that the court issue a new Pretrial Preparation Order reflecting these
6 new dates and granting defendant leave to file the counterclaim attached hereto as Exhibit A.

7 SO STIPULATED.

8 DATED: December 20, 2007

9
10 LELAND, PARACHINI, STEINBERG
11 MATZGER & MELNICK, LLP

12 DATED: December 20, 2007

13
14 GOLDSBERRY, FREEMAN & GUZMAN, LLP

15
16 By: /s/ Francis M. Goldsberry III
17 FRANCIS M. GOLDSBERRY III
18 Attorneys for Defendants
19 ATKINSON COMPANY OF CALIFORNIA,
20 f/k/a Guy F. Atkinson Company of
California; ATKINSON COMPANY, a
Nevada corporation, f/k/a Guy F.
Atkinson Company

Re: *Bottoms v. ATKN Company of California, et al.*
United States District Court
Northern District No.: 3:05-cv-03045 SI

EXHIBIT A

**JOINT APPLICATION AND STIPULATION TO AMEND
THE PRETRIAL PREPARATION ORDER AS AMENDED**

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California; ATKN COMPANY, a
Nevada corporation, f/k/a Guy F.
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MARY A. BOTTOMS, an individual and as
trustee for the Bottoms Family 1989 Trust;
THE BLUE OAK CHARITABLE FUND, a
California non-profit public benefit corporation,)) CASE NO. 3:05-cv-03045 SI
Plaintiffs,)) **COUNTERCLAIM OF DEFENDANTS**
vs.)) **ATKN COMPANY OF CALIFORNIA AND**
ATKN COMPANY OF CALIFORNIA, f/k/a)) **ATKN COMPANY**
Guy F. Atkinson Company of California;))
ATKN COMPANY, a Nevada corporation,))
f/k/a Guy F. Atkinson Company, and DOES 1 -))
100,k))
Defendants.))

1. Counterclaimants ATKIN COMPANY OF CALIFORNIA AND ATKIN COMPANY bring this counterclaim for contribution against counterdefendants MARY A. BOTTOMS, individually and as trustee for the Bottoms Family 1989 Trust, and THE BLUE OAK CHARITABLE FUND (collectively "counterdefendants"). This counterclaim arises out of the same transactions, occurrences and set of circumstances set forth in plaintiffs' complaint. Jurisdiction and venue with respect to these counterclaims are proper in this Court under the

provisions of 42 U.S.C. § 9613(b).

2. Counterclaimant is informed and believes, and thereon alleges, that
3 counterdefendants are an “owner” or “operator” of “facilities” from which there has been a
4 “release” of hazardous substances into the “environment,” within the meaning of 42 U.S.C. § 9607.

5. Counterclaimants deny any and all liability to plaintiffs. However, if plaintiffs
6 obtain a judgment of joint and several liability on their complaint against counterclaimants,
7 counterclaimants are informed and believe that they will be liable for an amount greater than
8 counterclaimants’ equitable share of liability. Therefore, counterclaimants will be entitled to
9 contribution from counterdefendants pursuant to 42 U.S.C. § 9613(f).

PRAYER

10 Wherefore, ATKN COMPANY OF CALIFORNIA AND ATKN COMPANY pray for
11 judgment as follows:

- 13 (a) Contribution for any liability above and beyond counterclaimant’s equitable share;
14 and
- 15 (b) For such other and further relief as this Court may deem just and proper.

16
17 DATED: GOLDSBERRY, FREEMAN & GUZMAN, LLP

18
19 By: _____
20 FRANCIS M. GOLDSBERRY III
21 Attorneys for Defendants
22 ATKN COMPANY OF CALIFORNIA,
f/k/a Guy F. Atkinson Company of
California; ATKN COMPANY, a
Nevada corporation, f/k/a Guy F.
Atkinson Company